IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-9-2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

W.P.Nos.7856 & 10101 to 10103 of 2007
and
Connected Miscellaneous Petitions

1. B. Narayanan
2. R. Sethu
3. P.S. Selvaraj
4. T. Vijayakumar
5. Chandramohan
6. S. Suresh
7. S. Balraj
8. K. Gowdhaman
9. N. Ravichandran
10. V. Thangadurai
11. S. Ramachandran
12. M. Selvarajan
13. T. Ganasekar
14. K. Rajendran
15. A. Murugasamy
16. M. Kanakarajan
17. V. Ashok kumar
18. Palaniswamy
19. S. Pechimuthu Pandian
20. R. Manimaran
21. R. Krishnaswamy
22. P.J. Janardanan
23. V. Mariappan
24. K. Sudanthirarajan
25. K. Murugan
26. P. Mohan
27. G. Pandian
28. S. Muruga Subramanian ... Petitioners

[in W.P.No.7856 of 2007]

1. K. Ramasamy
2. K.P. Kesavan
3. D. Kanagaraj
4. R. Mohan
5. M. Selvam ... Petitioners

[in W.P.No.10101 of 2007]

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1. M. Karunanithi
2. K. Muralidharan
3. KR. Radhakrishnan
4. S. Muthurajan
5. D. Gunasekaran ... Petitioners
[in W.P.No.10102 of 2007]

1. K. Elangovan
2. G. Marimuthu
3. S. Rajendran
4. P. Neethimohan
5. V.S.Kalivarathan ... Petitioners
[in W.P.No.10103 of 2007]

vs.

1. The State of Tamilnadu
represented by
The Secretary to Government,
Home (Police II) Department,
Fort. St. George, Chennia-9.

2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4. ... R1, R2 in all the Wps

3. P. Vasanthakumari
4. S. Jayanthi
5. Joy Issac Pandi
6. M. Pathima Devi
7. K. Padmavathy
8. H. Vijayanatchiyar
9. P. Fathima Rohini
10. R. Rathika
11. P.Nallakkal
12. K.Rajamani
13. P.Uma
14. P.Emysusila
15. S.Saraswathy
16. R. Bhuvaneswari
17. I.T.Umamaheshwari
18. S.Florajayanthi
19. A.Pauline
20. B.Banummathi
21. E.Anusuya
22. N.Usharani
23. V.Sudharani
24. Thandavan
25. K.Venugopal
26. S.Krishnamoorthy

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27.N.Krishnamoorthy
28.N.Subramani
29.M.Poongavanam
30.D.Kannaian
31.P.Murugan
32.B. Dharmalingam
33.G.Ramachandran
34.M.Subbiah
35.N.Rajasekaan ... Respondents 3 to 35
[in W.Ps.]
No.7856/07 and 10101/07

RR3 t 35 impleaded as per order
dated 24.4.007 by KCJ in
M.P.No,2 and 3/07
in W.P.10101/2007 and M.P.No.3 and 4 / 2007
in W.P.7856/2007

Writ petitions filed under Article 226 of Constitution of India to issue a Declaration, declaring that the Government Order issued by the 1st respondent in G.O.Ms.No.66 Home (Pol.2) Department dated 12.01.2007 deleting rule 4(B) of the T.N. Police Service retrospectively from 1.6.2006 as null and void and further direct the respondents to consider the claim of the petitioners for promotion as Deputy Superintendent of Police Category-1 for the ensuing panel of the year 2006-07 respectively.

For petitioners : Mr.K. Venkatramani, S.C.
For Mr. Muthappan

For respondents : Mr.R. Vidhuthalai
Advocate General [for R1 and R2]
assisted by Mr.G.Sankaran,
Spl.Govt.Pleader

Mr.L.Chandrakumar [for R3 to R23]

Mr.V. Ravikumar [for R24 to R35]

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C O M M O N O R D E R

In all these writ petitions the prayer of the petitioners' is for a declaration declaring that the Government Order issued by the first respondent in G.O.Ms.No.66 Home (Pol.2) Department dated 12.01.2007 (hereinafter referred to as "said G.O.") deleting rule 4 (B) of the Special Rule for Tamil Nadu Police Service retrospectively from 1.6.2006 as null and void and further direct the respondents to consider the claim of the petitioners for promotion as Deputy Superintendent of Police, Category-I.

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2. The grievance of the petitioners as could be seen from their affidavit flows from the following facts:

(a) The petitioners have entered the service as directly recruited Sub-Inspector of Police through a selection conducted by the Director General of Police, Chennai. Later they have been promoted as Inspector of Police and their next avenue of promotion as Deputy Superintendent of Police Category-1 by recruitment by transfer of service. Tamil Nadu Services Manual Volume II Section 22 deals with Tamil Nadu Police Service and the special rules deals with appointment and promotion to the post of Deputy Superintendent of Police Category - I. In the said Rule Clause 11 deals with three categories of Deputy Superintendents of Police in the Tamilnadu Police Service. The mode of appointment of Deputy Superintendent Category I is by direct recruitment or recruitment by transfer of service from eligible Inspectors of Police from the Tamil Nadu Police Subordidnate Service. The crucial date for drawing up the panel is first June of every year. The rule (1)(b) says that in so far as Category I Deputy Superintendent of Police is concerned, a person must completed five years of service in the rank of Inspector of police, either officiating or permanent and has not reached the age of 55 as on 1st June of the year in which the selection for promotion is made. Thus, the maximum age limit is fixed for promotion of Deputy Superintendent of Police by recruitment by transfer of service is 55 years as on first June of that particular year.

(b) While so, based on the announcement made by the Honourable Chief Minister of Tamil Nadu in the assembly on 30.8.2006, the upper age limit for promotion to the post of Deputy Superintendent of Police from the post of Inspector of Police has been removed. The Government in the "said G.O.", based on the said announcement, deleted the clause in Rule 4(B), 4(C) and 4(D) respectively in the Tamil Nadu Police Service Rules retrospectively from 1.6.2006. Thus it has taken away the existing accrued rights of the petitioners who are already serving in the department liable for promotion on the crucial date viz., 1.06.2006. Hence, the present writ petitions for the relief stated above.

3. Counter affidavit has been filed by the respondents 1 and 2 wherein it has been pointed out that the upper age limit has been elevated by the "said G.O." in order to extend the benefit to the persons who are under the verge of retirement without being elevated to the higher rank due to age factor. It will boost their morale to strive hard till their superannuation. Further it has been stated that considering the anomalous situation in the promotion among the police personnel and in order to motivate the Inspectors of Police, the Honourable Chief Minister of Tamilnadu has made the above

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announcement. The said announcement made by the Honourable Chief Minister was given effect to retrospectively from 1.6.2006 since lot of Inspectors of Police who have crossed age of 55 years as on 1.6.2006 will also get benefited. Otherwise, many of the of the Inspectors may lose their chances to get further promotion. Considering that fact, the Government has issued orders with retrospective effect.

4. It has been further urged by the respondents 1 and 2 in their counter that there is no accrued right for promotion to the petitioner because the last panel for the year 2005-2006 was approved by the Government in G.O.Ms.No.675 Home (Pol.2) Department, dated 27.7.2006 and after that, current panel for the year 2006-20007 is under process. Further it has been urged that the question of depriving the chances of the petitioners does not arise as none of the juniors of the petitioner have been considered for promotion and most of the seniors who will be considered for the current panel will retire from service shortly.

5. It has been further averred that the petitioners who belongs to 1987 batch Sub-Inspector of Police may either reach or may not reach the zone of consideration which will be decided only on the approval of the estimate of the vacancy by the Government and the list of eligible candidates is finalised on merits. But before that, the petitioners have approached this Court on assumption and presumption.

6. With these backdrop of the matter, Mr.K. Venkatramani, learned Senior Counsel appearing the petitioners contended that

(a) the impugned order deleting the upper age limit retrospectively is opposed to pubic policy and hence in violation of the service rules made under article 309 of Constitution of India.

(b) The Honourable Chief Minister made an announcement only on 30.8.2006 in the floor of the legislative assembly and hence there was no policy decision arrived at before the said date. While so, giving retrospective effect from 1.6.2006 is totally arbitrary and discriminatory in nature.

(c) The impugned order has been issued to help certain individuals who have already crossed the age of 55 years and those who are working as Security Officers and Personal Officers to various higher officials and political heads of the State. Hence on the ground of malafides also the impugned order is liable to be quashed.

(d) The existing rule fixing the age limit as 55 is for the reason that a person with an active participation alone will be able

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to manage the show and persons who are on the verge of retirement may not be able to achieve the target, since some of them have to be posed as Sub Divisional Officer who has to actively control the subordinates and also maintain the law and order.

(e) in view of relaxing the upper age limit, the chances of promotion of the petitioners are postponed endlessly till such of those persons who are benefited by the order is promoted and superannuated from service.

7. Per contra Mr. R. Vidhuthalai, learned Advocate General appearing for the respondents 1 and 2 contended that:

(a) the Government has taken a policy decision in relaxing the upper age limit and the same is being taken to promote the public interest which shall not be interfered by the courts.

(b) By relaxing the upper age limit, zone of consideration expands and enlarged and hence the petitioners cannot have any grievance. No vested right or interest of the petitioners have been taken away by the "said G.O." chances of promotion cannot be a ground to interfere with the present order.

8. Mr.L. Chandrakumar, the learned counsel appearing for the Respondents 3 to 23, who stands benefitted by the relaxation of upper age, contended that:

(a) The Sub Inspectors of Police who have been selected in 1981 and Inspector of Police of 1995 batch will be considered first for promotion as Deputy Superintendent of Police Grade-I and after considering them the consideration will be that of the petitioners. Hence the petitioners are not in the zone of consideration. While so, the petitioners have approached this Court on assumption.

(b) Relaxation of age is beneficial order and available to all including that of the petitioners and hence the petitioners cannot have any grievance.

9. Mr. V. Ravikumar, the learned counsel appearing for the respondents 24 to 35, contended on the same footing as that of the counsel appearing for R3 to R23.

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10. I have considered the arguments advanced by Mr. K. Venkatramani, the learned Senior Counsel, appearing for the petitioners, Mr. R. Vidhuthalai, the learned Advocate General appearing for the respondents 1 and 2, Mr.L Chandrakumar, the learned counsel appearing for R3 to R23 and Mr.V. Ravikumar, the learned counsel appearing for R24 to 35.

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11. The petitioners in all these cases questioned the authority of the Government in relaxing the upper age limit of retirement by transfer of service as Deputy Superintendent of Police, Category-I for the year 2006-2007. The said decision has been taken by the Government keeping in mind that due to age factor alone certain Inspectors of Police are denied elevation of higher rank, which is sought to be eliminated by the present G.O. It has been explained by the Government that the said decision has been taken to boost their morale to strive hard till they attain the age of superannuation. When such a policy decision has been taken by the Government it is not for the petitioners to contend that the G.O. is arbitrary. The Government after considering various factors would have thought it fit to relax the upper age limit. It is within the province of the Government to do so and it is not within the purview of this Court sitting in to decide under Article 226 of the Constitution of India to interfere in such policy decision. Hence, I am unable to accept the contention of the learned counsel for the petitioners that the Government has no power to relax the upper age limit.

12. The next question that arises for consideration is whether the Government Order could be given effect to retrospectively. It is an admitted fact that the decision has been announced by the Honourable Chief Minister of Tamil Nadu on 30.8.2006 in the floor of the Legislative Assembly and it has been given effect to retrospectively from 1.6.2006. Legislature has power to amend, delete or obliterate, constitute a provision with retrospective effect. Absolutely, there is no bar over the same. The only restriction is that it shall not violate Article 14 of Constitution of India, arbitrary and unreasonable. Thus the legislature is entirely competent to legislate with retrospective effect, to take away or impair any vested right acquired under existing laws since they have been made under a written constitution and it can be given effect to, perspectively or retrospectively. Thus the legislature has got full competency and power to legislate an Act retrospectively, which cannot be questioned.

13. The next contention of the learned senior counsel appearing for the petitioner is that by removing the upper age limit, the chances of the petitioners for promotion to higher post are totally diminished. Thus, the impugned order takes away the accrued rights of the petitioners who are already members of the service. Counter affidavit has been filed by the respondents 1 and 2 wherein it has been pointed out that it is highly incorrect to state that the chances of the petitioners for promotion are deprived, as lot of seniors are there before these petitioners in the seniority list and hence, they cannot claim that they are eligible for promotion and that they are deprived of their promotion. There is no accrued right for promotion to the petitioners because the last panel for

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the year 2005-2006 was approved and issued by the Government in G.O.Ms.No.675, Home (Pol.2) Department dated 27.7.2006 in which the last person included in the panel belonged to 1979 batch of Sub Inspector of Police. Hence, after that, current panel for the year 2006-07 is under process. The name of Inspectors of Police who are earlier left over for various reasons have to be considered now and then direct Women Sub Inspectors of Police of 1981 batch have to be considered. Succeeding them, the Inspectors of Police who are appointed as direct Grade-I Police Constable during the year 1972 are coming under the zone of consideration and then only the 1987 batch Sub Inspectors of Police, namely, the petitioners will come under the zone of consideration.

14. The above statement made in the counter affidavit will clearly prove that the chances of the petitioners for promotion are not deprived. Even otherwise, whenever any Act or amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, it is bound to affect someone. Furthermore, the petitioners cannot approach this Court on the mere ground that their chances of promotion will be affected, if the upper age limit is removed by way of amendment giving retrospective effect.

15. The next contention which is to be answered is "whether the impugned G.O. which is an administrative order, can take away the rights of the parties till the Rules are amended". The petitioner has averred in their affidavit that the impugned order is only an administrative order and so far the Rules have not been amended to that effect.

16. By way of reply, the respondents in paragraph 23 of the counter affidavit, has stated as follows:-

> "With regard to the averments made in para-10 of the affidavit, it is submitted that though the Government Order has been issued as an administrative order, the Government have also mentioned that necessary amendments to Special Rules for Tamil Nadu Police Service will be issued separately and accordingly action is under process to issue necessary amendments to the rules."

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Furthermore, in the impugned G.O., after extracting the announcement of the Hon'ble Chief Minister made in the Assembly on 30.8.2006, the G.O. reads as follows:-

> "In pursuance of the announcement made by the Hon'ble Chief Minister, the Director General of Police has sent necessary proposal for deleting the provision

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relating to upper age limit prescribed for promotion of Inspectors of Police as Deputy Superintendent of Police (Category-1), (Category-3) and (Category-2) in Rule 4(B), 4(C) and 4(D) respectively of the Special Rules for the Tamil Nadu Police Service with retrospective effect from 1.6.2006.

The Government after careful examination of the proposal of the Director General of Police, have decided to accept the same. They accordingly direct that the provision prescribing upper age limit for promotion of Inspectors of Police as Deputy Superintendent of Police (Category-1), (Category-3) and Category-2) in Rule 1(B), 1(C) and 1(D) respectively of the Special Rules for the Tamil Nadu Police Service be deleted with retrospective effect from 1.6.2006."

This makes it clear that even though the announcement made by the Hon'ble Chief Minister, which culminated in the form of a Government Order in G.O.Ms.No.66, Home (POL.2) Department dated 12.1.2007, so far Rules have not been amended in this regard. Needless to say that till the Rules are amended in this regard, the respondents 1 and 2 cannot enforce, implement and give effect to the impugned G.O.

17. Thus, on the discussions made above, the irresistible conclusions that could be arrived at are that:

(a) The Government thought it fit to remove the upper age limit for promotion to the post of Deputy Superintendent of Police, a policy decision, which cannot be interfered by this Court. It is within the province of the Government to do so and it is not within the purview of this Court sitting in to interfere with such policy decision under Article 226 of the Constitution of India.

(b) The legislature has power to amend, delete, obliterate, or constitute a provision with retrospective effect.

(c) A mere chance of promotion of the petitioners will be affected may not be a ground to interfere with the impugned Government Order.

(d) However, since the Rules have not been amended, taking away the upper age limit for promotion to the post of Deputy Superintendent of Police from the post Inspector of Police by an administrative order made in G.O.Ms.No.66 Home (Pol.2) Department dated 12.1.2007, the same cannot be implemented, till the Rules are amended.

18. Hence, for the reasons stated above, I am inclined to hold that the respondents 1 and 2, by the Government Order in

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G.O.Ms.No.66 dated 12.1.2007 cannot remove the upper age limit for promotion of Inspectors of Police as Deputy Superintendent of Police without amending the Rules. These Writ Petitions are therefore disposed of accordingly. Consequently, the connected Miscellaneous Petitions are closed. No costs. However, I make it clear that the same could be done by amending the Rules in this regard.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ggs/dpp

To

1. The Secretary to Government
   State of Tamilnadu
   Home (Police II) Department,
   Fort. St. George, Chennia-9.

2. The Director General of Police,
   Dr. Radhakrishnan Salai,
   Mylapore, Chennai - 4.

1 cc to Mr.L. Chandrakumar, Advocate, sr. 58730
1 cc toMr.V. Ravikumar, Advocate, sr. 58943
4 ccs to Mr.T. Aynagaraprabhu, Advocate, sr. 58783
4 cs to the Government Pleader, Sr. 59095to 59098

W.P.Nos.7856 & 10101 to 10103 of 2007;&
Connected M.Ps.

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